United States Court of Appeals

for the Second Circuit

APPENDIX

76-7517

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ERNEST CORALLUZZO,

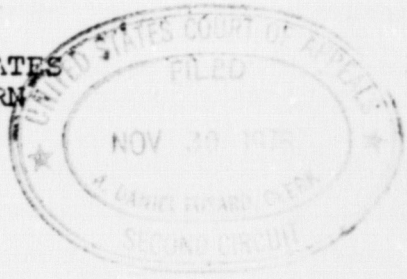
Plaintiff-Appellee,

-against-

NEW YORK STATE PAROLE BOARD and MEMBERS OF THE NEW YORK STATE PAROLE BOARD, individually and in their official capacity,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK



APPENDIX

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendants-Appellants
Office & P.O. Address
Two World Trade Center
New York, New York 10047
Tel. No. 488-7410

PAGINATION AS IN ORIGINAL COPY

INDEX

DIST/OFFICE	DOCKET YR.	DOCKET NUMBER	FILING DATE MO.	DAY	YEAR	J	N/S	O	F	R 23	DEMAND $	OTHER	JUDGE NUMBER	JURY DEM.	DOCKET YR.	DOCKET NUMBER
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PLAINTIFFS

CORALLUZZO, Ernest

DEFENDANTS

NEW YORK STATE PAROLE BOARD
and
MEMBERS OF THE NEW YORK STATE PAROLE BOARD, Individually and in their official capacity

CAUSE 42 U.S.C. §1983 Denial of Pltfs. due process rights by Parole Board.

pah

ATTORNEYS

Philip B. Abramowitz, Esq.
~~76 Niagara Street~~
~~Buffalo, New York 14202~~
~~855-0717~~
556 Franklin Street
~~Buffalo, New York 14202~~
815 Liberty Bank Building
Buffalo, New York 14202

Louis J. Lefkowitz, Esq.
Attorney General
State of New York
65 Court Street
Buffalo, New York 14202

Mr. Mejeur 842-5833

CHECK HERE	FILING FEES PAID			STATISTICAL CARDS	
	DATE	RECEIPT NUMBER	C.D. NUMBER	CARD	DATE MAILED

Civ-76-81 Ernest Coralluzzo v. New York State Parole Board & 1

DATE 1976	NR.	PROCEEDINGS
Feb. 20	1	Filed complaint.
20	2	" order to show cause why an order & judgment should not issue declaring the action taken by deft. arbitrary, capricious & in violation of pltfs. rights etc. ret. 2-27-76-Curtin, DJ - adj. to 3-5-76 F-17
20		JS 5 made
20		Issued summons and one (1) copy.(sent to Mar. office 2-27-76)
Mar. 2	3	Filed letter to Judge Curtin dated 3-1-76 from Pltfs. Atty.
5		Ret. of OTSC. Briefs to be filed by parties.
10	4	Filed Deft., N.Y. State Bd. of Parole answer.
12	5	" Summons and Mar. ret. on S&C served on Chairman, N.Y. Parole Bd 3-8-76
25	6	" brief for pltf.
Apr. 9	7	" brief for defts.
Aug. 6	8	" Decision & Order directing the Parol Board to hold another MPI hearing within 60 days of this order etc. Pltf's other requests for relief are denied. Defts. motion to dismiss is denied-Curtin, DJ Notice & copies to Philip Abramowitz and Louis J. Lefkowitz F-179
13	9	Filed Defts. notice of motion & motion to alter or amend a judgment and for relief from judgment or order & for a stay pending decision of such motion
23		Defts. motion to alter or amend a judgment & for relief from judgment, etc. Submitted.
Oct. 6	10	Filed Decision & Order directing deft. to serve & file with the Court within 15 days of this order an affidavit showing reasonable cause why any of the items in pltf's. parole file should not be disclosed to him. The time for holding MPI hearing is extended etc-Curtin, DJ Notice & copies to Philip Abramowitz & Louis J. Lefkowitz F-181
14	11	" Defts'. Notice of Appeal (copy mailed to Mr. Abramowitz and to Clerk, CCA with copy of docket entries; CCA's Forms C and D mailed to Louis J. Lefkowitz, Esq., Bflo., Attn. Lauren R. Wixson, Esq.)
14	12	" Defts'. Affidavit in opposition to Pltf's. application for an order to show cause (Issue in file - Ltr not been given to Clerk for filing)
14	13	" Pltf's. Affidavit in opposition to Defts'. motion to reconsider decision of 8-6-76 (Issue in file - Ltr not been given to Clerk for filing)
15	14	" Deft's. Notice of Motion & Motion for stay pending appeal ret. 10-26-76
26		Deft. motion for stay pending appeal Adj. to 11-1-76
Nov. 1	15	Filed order that the order of this Ct. entered 10-6-76 is stayed pending the appeal by deft. etc.-Curtin, DJ Notice & copies to Philip Abramowitz & Louis J. Lefkowitz F-182
1		Deft's. motion for stay pending appeal. Order previously granted.
5		Original papers, docket entries & Clerk's certificate mailed to Clerk, CCA
8		Filed Deft's. Affidavit

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ERNEST CORALLUZZO, Plaintiff

v.

NEW YORK STATE PAROLE BOARD and MEMBERS OF THE NEW YORK STATE PAROLE BOARD, Individually and in their official capacity, Defendants.

NOTICE OF APPEAL

CIV-76-81

NOTICE is hereby given that New York State Board of Parole, defendant above-named, hereby appeals to the United States Court of Appeals for the Second Circuit from the Decision and Order entered in this action in the office of the Clerk of the United States District Court, Western District of New York, on the 6th day of October, 1976, and from each and every part of said Order.

Dated: Bufffalo, New York
October 14, 1976

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendants

By:

LAUREN R. WIXSON, of counsel
65 Court Street
Buffalo, New York 14202
Telephone: 842-5833

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ERNEST CORALLUZZO

Plaintiff

-vs-

NEW YORK STATE PAROLE BOARD, et al.

Defendant

ORDER TO SHOW CAUSE

Upon the annexed Affidavit of PHILIP B. ABRAMOWITZ and upon all the pleadings and proceedings had herein, let the Defendant, NEW YORK BOARD OF PAROLE, Show Cause at a Special Term of this Court to be held on the 27 day of February, 1976 at 9 o'clock in the Forenoon of that day or as soon thereafter as counsel may be heard, why an Order and Judgment should not be issued declaring the Action taken by the Defendant, NEW YORK STATE BOARD OF PAROLE, arbitrary, capricious and in violation of Plaintiff's rights under the Fifth and Fourteen Amendments to the United States Constitution; and let the Defendant, NEW YORK STATE BOARD OF PAROLE further Show Cause why a new hearing to be conducted in accordance with due process standards should not be ordered, and it is further

ORDERED, that service of this Order, together with the annexed Affidavit and Complaint, made upon the office of the New York State Attorney General on or before the 20 day of February, 1976, by 5 o'clock in the Forenoon of that date, shall be deemed good and sufficient service.

ENTER: Service may be made by person other than marshal

John T. Curtin

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ERNEST CORALLUZZO

Plaintiff

-vs-

NEW YORK STATE PAROLE BOARD, et al.

Defendant

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF ERIE) SS.:
CITY OF BUFFALO)

PHILIP B. ABRAMOWITZ, ESQ., being duly sworn, deposes and says:

1. That I am an attorney duly licensed to practice before this Court, and I am the retained attorney for Plaintiff herein. I am fully familiar with the facts and circumstances of this case, and I submit this Affidavit in support of Plaintiff's Application for an Order requiring the Defendant, BOARD OF PAROLE, to Show Cause why an Order and Judgment should not be issued declaring the actions taken by Defendant, BOARD OF PAROLE, are arbitrary, capricious and unlawful and in violation of Plaintiff's rights under the Fifth and Fourteenth Amendments to the United States Constitution.

2. Plaintiff, ERNEST CORALLUZZO, is currently incarcerated in Attica Correctional Facility, pursuant to an indetermination sentence up to 15 years, entered against him consequent upon his plea of guilty.

3. Plaintiff became eligible for parole under §70.00 of the New York Penal Law on or about February 1, 1976, at which time he had served one year in the custody of the New York State Department of Corrections.

4. In January, 1976, Defendant, BOARD OF PAROLE, met and considered Plaintiff for possible release, held a "hearing" with Plaintiff, and denied him parole. At the same time, Defendant, BOARD OF PAROLE, notified him that they had assigned to him a minimum sentence, under §70.00(2) of the New York Penal Law of five years, and that he would be next considered for parole in February, 1980.

5. Defendant, BOARD OF PAROLE, gave no reason whatever for its action.

6. Defendant, BOARD OF PAROLE, gave Plaintiff no advance notice of what factors it would take into consideration, nor what evidence it would rely on, in denying Plaintiff parole.

7. At said hearing, Plaintiff was given no opportunity to view the evidence, if any, adduced against him on which the Defendant, BOARD OF PAROLE, relied in refusing him parole and determining to hold him in prison for at least another four years.

8. Plaintiff submits that the failure of the Defendant, PAROLE BOARD to afford Plaintiff the above mentioned procedural safeguards is in clear violation of the settled law of this circuit, which is clear that a prisoner must be given adequate reasons for denial of parole, an opportunity to view and attempt to explain away or rebut the evidence against him, and must have notice the Board is contemplating relying

on such evidence or such charges so that he may prepare a case against such reliance. See Johnson v. Chairman, New York State Board of Parole, 500 F.2d 925 (2nd Cir. 1974); Cardaropoli v. Norton, 523 F.2d 990 (2nd Cir. 1975); Haymes v. Regan, 525 F.2d 540 (2nd Cir. 1975).

PHILIP B. ABRAMOWITZ

Sworn to before me
this 14th day of
February, 1976.

ROBERT C. MACEK #4617096
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 1977

SUMMONS IN A CIVIL ACTION

CIV. 1a (2-64)
(Formerly D. C. Form No.46a Rev. (6-49))

United States District Court

FOR THE

~~WESTERN DISTRICT OF NEW YORK~~

Parole F

CIV- 76 -81

CIVIL ACTION FILE NO.

CORRECTIONAL SERVICES
RECEIVED
MAR 3 1976
COUNSEL

ERNEST CORALLUZZO

Plaintiff

v.

SUMMONS

NEW YORK STATE PAROLE BOARD and MEMBERS OF THE NEW YORK STATE PAROLE BOARD, Individually and in their official capacity

Defendants

To the above named Defendant :

You are hereby summoned and required to serve upon

PHILLIP B. ABRAMOWITZ, ESQ.

plaintiff's attorney , whose address is 76 Niagara Street, Buffalo, New York 14202

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

JOHN K. ADAMS
Clerk of Court.

Deputy Clerk.

Date: February 20, 1976

[Seal of Court]

NOTE: This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ERNEST CORALLUZZO

Plaintiff

-vs-

NEW YORK STATE PAROLE BOARD and MEMBERS OF THE NEW YORK STATE PAROLE BOARD, Individually and in their official capacity

Defendants

CIV- 76 .81

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTION

Plaintiff, by his attorneys, MARTOCHE, COLLESANO, ABRAMOWITZ & GELLER, PHILIP B. ABRAMOWITZ, Of Counsel, for his Complaint against the Defendant, alleges:

JURISDICTION

I. This is an Action for Declaratory Judgment and Preliminary Injunction and Permanent Injunction, enjoining the Defendants from considering Plaintiff's application for parole in a manner that deprives him of his rights under the Fifth and Fourteenth Amendments to the United States Constitution, and declaring that the consideration previously granted Plaintiff's application was in violation of those rights.

2. This action arising under 42 U.S.C. §1983, together with the provisions of the Fifth and Fourteenth Amendments to the United States Constitution. This Court has jurisdiction under 28 U.S.C. §1343(3).

PARTIES

3. Plaintiff is a resident of the State of New York, and is currently incarcerated in Attica Correctional Facility at Attica, New York.

4. Defendant, PAROLE BOARD OF THE STATE OF NEW YORK, is the body charged by §210 and §805 of the Correction Law of New York, with the authority and duty to determine whether to release Plaintiff on parole or to continue his incarceration.

CLAIM FOR RELIEF

5. On or about February 1, 1975, Plaintiff was committed to the custody of the New York State Department of Corrections, for an indeterminant term under §70.00 of the New York Penal Law of up to 15 years, by a Judgment entered pursuant to his guilty plea to a violation of the New York Penal Law. Plaintiff was subsequently incarcerated in Attica Correctional Facility, where he now resides.

6. Plaintiff became eligible to be released on parole on or about February 1, 1976.

7. In early January, 1976, following a hearing on Plaintiff's application for release conducted by agents of the Defendant, PAROLE BOARD, Plaintiff was notified by the PAROLE BOARD that the Board had set Plaintiff's minimum sentence at 5 years and 0 months, and that

MARTOCHE, COLLESANO, ABRAMOWITZ & GELLER
Attorneys at Law • 76 Niagara Street • Buffalo, New York 14202 • (716) 855-0717

Plaintiff would "appear for release consideration at the February, 1980 Board meeting". (This notice to Plaintiff, dated January 15, 1976 and called a "Minimum Sentence Notice", is annexed to this Complaint and incorporated herein as Exhibit A.)

8. No reasons were given by Board for its refusal to release Plaintiff at this time, nor for its assignment of a 5 year minimum sentence to Plaintiff.

9. The Board's determination is deficient in the following additional ways:

(a) No notice was given Plaintiff prior to the Board meeting of what basis, or on what evidence, the Board would rely in denying parole to Plaintiff.

(b) Plaintiff was not accorded an opportunity to view or attempt to examine the evidence relied upon by the Board in denying parole to Plaintiff, or to cross-examine those who gave evidence against him, or to offer evidence in rebuttal to such evidence.

(c) Plaintiff was secretly classified as a member of organized crime, and has not been allowed to view or otherwise confront the supposed evidence of which his wrongful classification was made.

(d) The Board's decision was not made on the basis of standards sufficiently precise to require the decision making body to make a fair and equitable and thoughtful decision on Plaintiff's case, nor to allow a reviewing Court to determine whether the Board acted on the basis of permissible or inpermissible factors, and whether the Board considered the relevant factors.

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(e) The Board in denying Plaintiff's Parole at this time acted arbitrarily, capriciously and unlawfully.

WHEREFORE, Plaintiff requests the following relief:

1. A Declaration the Defendant's consideration of Plaintiff's application for release was conducted in violation of Plaintiff's rights under the Fifth and Fourteenth Amendments of the United States Constitution; and

2. An Order requiring Defendants to reconsider Plaintiff's application for release in a manner consistent with the due process standards guaranteed by the Fifth and Fourteenth Amendments of the United States Constitution.

DATED: Buffalo, New York
February 19, 1976

PHILIP B. ABRAMOWITZ, ESQ.
MARTOCHE, COLLESANO, ABRAMOWITZ & GELLER
Attorneys for Plaintiff
Office and Post Office Address
76 Niagara Street
Buffalo, New York 14202
Tel. No. (716) 855-0717

FORM 3008A

35/13

STATE OF NEW YORK—DEPARTMENT OF CORRECTIONAL SERVICES

MINIMUM SENTENCE NOTICE

Name Coralluzzo, Ernest Date 1-15-76

Institution Attica Correctional Facility IIS Number 705618 G

The Board of Parole at the _____ meeting set your minimum sentence at 5 yrs. and 0 mos. You will appear for rel e consider ition at the February 1980 Board meeting. In accordance with Section 805, Subdivision 2, of the Correction Law, this determination will be reviewed by the entire Board of Parole; and if any change is to occur, you will be notified.

J. DeLong
Senior Parole Officer

cc- Executive Secretary

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EXHIBIT A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ERNEST CORALLUZZO, Plaintiff

vs.

NEW YORK STATE PAROLE BOARD and MEMBERS OF THE NEW YORK STATE PAROLE BOARD, Individually and in their official capacity, Defendants.

ANSWER

CIV-76-81

Defendant, New York State Board of Parole, by its attorney, LOUIS J. LEFKOWITZ, Attorney General of the State of New York, Lauren R. Wixson, Assistant Attorney General, of Counsel, for an answer, alleges:

1. Denies each and every allegation contained in paragraphs 6, 8, 9(a), 9(c), 9(d), 9(e) of the complaint herein.

2. Denies that part of paragraph 7 of the complaint herein which alleges that the Board of Parole conducted a hearing on plaintiff's application for parole release in January of 1976.

DEFENDANT, NEW YORK STATE BOARD OF PAROLE, BY ITS ATTORNEY, AS A DEFENSE ALLEGES THAT:

3. On information and belief, plaintiff has not secured personal jurisdiction over the defendant, the New York State Board of Parole, in that service of process was not duly effected pursuant to New York Civil Practice Law and Rules §312 by personal service upon the Chairman of the New York State Board of Parole.

4. The Board of Parole held a Minimum Period of Imprisonment hearing on January 15, 1976 and at that hearing gave a reason for their decision.

5. A certified copy of the minutes of that hearing is attached herein and marked Exhibit A.

6. On March 3, 1976, at the Attica Correctional Facility, the plaintiff, Ernest Coralluzzo, was personally serviced with a copy of the "Minimum Sentence Notice" with "Reasons for MPI".

7. The original of that notice is attached herein and

and marked Exhibit 2.

8. The complaint fails to state a claim upon which relief can be granted.

9. Defendant, New York State Board of Parole, requests a jury trial on all matters alleged which are triable before a jury.

WHEREFORE, defendant prays that the petition herein be dismissed in all respects.

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendants
65 Court Street
Buffalo, New York 14202
Telephone: 842-5833

By:

LAUREN R. WIXSON
Assistant Attorney General
of Counsel

FORM 3006A

STATE OF NEW YORK—DEPARTMENT OF CORRECTIONAL SERVICES

MINIMUM SENTENCE NOTICE

Name Ernest Coralluzzo 75-A-848 Date March 3, 1976

Institution ATTICA CORRECTIONAL FACILITY IIS Number 056180

The Board of Parole at the January 1976 meeting set your minimum sentence at 5 yrs. and XX mos. You will appear for release consideration at the 2/80 Board Board meeting. In accordance with Section 805, Subdivision 2, of the Correction Law, this determination will be reviewed by the entire Board of Parole; and if any change is to occur, you will be notified.

H. Galvin
Senior Parole Officer

cc: Executive Secretary

(OVER)

REASONS FOR MPI:

The case history makes it reasonable to conclude that this man's involvement in narcotic traffic is deep-rooted and high level. Separation from drugs seems improbable for five years.

NAME: Refused to signed
Ernest Coraluzzo 75-A-848

WITNESS: R Blake - 3-3-76

NEW YOUR STATE DEPARTMENT OF CORRECTIONAL SERVICES

CERTIFICATE

STATE OF NEW YORK
COUNTY OF ALBANY

I, Joseph V. Salo, as Executive Secretary to the New York State Board of Parole, hereby certify:

(1) That the Chairman of the Board of Parole is the legal custodian of the records of the Board.

(2) That pursuant to Correction Law § 6-c (5), I have been appointed as Executive Secretary to the Board, and have been delegated the duty to maintain the records of the Board.

(3) That the paper attached hereto as Exhibit "A" is a copy of the minimum sentence hearing held on Jan 15, 1976.

(4) That the copy of the paper attached hereto as Exhibit "B", titled "Minimum Sentence Notice," has been compared by me with the original document and is a true and accurate copy thereof. The signatures thereon are those of the Parole Board members who reviewed the minimum sentence determination, at a business meeting on Feb 23, 1976.

As evidence thereof, I have hereunto set my hand and affixed the seal of the New York State Department of Correctional Services, this 27th day of February, 1976.

Joseph V Salo
Executive Secretary
New York State Board of Parole

(SEAL)

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MINIMUM PERIOD OF IMPRISONMENT
(1) CASE OF: ERNEST CORALLUZZO IIN-7050100 AT-75-A-848
CRIMINAL

Q. [illegible] is Ernest Coralluzzo?
A.

Q. From our records it would appear that a court sentenced you to an Indeterminate sentence, fixed the maximum at fifteen years and fixed no minimum, right?
A. Zero to 15; yes sir.

Q. Under these circumstances the Board of Parole has to fix a time when you will appear for parole release consideration the first time.
A. I understand that, sir.

Q. We don't decide whether you should be released at the time we sit, but we must have some way to determine when a guy is going to come before us for parole release consideration. We're going to fix that time today. We have into consideration all the time that you have served. It appears that you started serving this sentence in a state correctional facility on March 14, 1975.
A. Yes sir.

Q. And before that you had already served seventeen days jailtime.
A. That's correct.

Q. We take into consideration all the material in your case folder and anything that you call to our attention. Is there something you want to say?
A. Well the only thing I can say is that since I have been incarcerated I realize what I did before was wrong. And I have a wife and two children which I miss. There is no way to explain that. I just hope that you can understand my sincerity and in saying that may back you could give me---the Parole Board, I realize, has one thing to do, is to put someone back on the street that won't come before them again, and that would be a benefit to you. And I realize the material things are not important, and my wife and my children are.

Q. Okay. There is a federal sentence, isn't there.
A. Yes, which is running concurrent.

Q. It is running concurrent with this.
A. Yes.

Q. What is it two years eight months.
A. Yes.

Q. No, two, eight year terms, that's what it is, two eight year terms concurrent.
A. I can make parole I think in two years eight months.

Q. I see.
A. I wrote to them concerning that.

Q. And you got a 20,000 dollar fine.
A. Yes.

Q. Is that paid.
A. Since I've been incarcerated let me say I lost my house. I had a trucking business. I lost that. I lost my house. My house is---my wife has moved from there we lived in New York State to Florida because her parents moved to Florida. She is about to go on welfare. She is applying right now. The house is in the hands of the lawyers, which I needed because my wife---

Q. Is the fine paid?
A. Well, my lawyers are working on that. I don't think I can pay it after I pay that. See, there is something about a plea, a coupons plea or something like that. But whatever money's are left from the house that I see it is going to---and lawyer is mine, the lawyer I had for my wife, which she was tortured and brought to trial. And it was said in open court or in the minutes somewhere that she was only indicted because they were afraid I would abscond or something. She has been in the hospital since. I have a problem with my daughter Diane, because I am not around.

Q. Complied it says that this was a pound of "coke".
A. It says in there a pound of cocaine, and there was a space sale. And the federal there was a mention of 25 kilo's of cocaine. Whatever is said there is a---I don't know what you call it, a church who was a friend of mine, Alvin

19 A

A. Rossi, who has brought so far 60 people to trial, and I don't kn[illegible] and my opinion is---and his word identified, it is in the [illegible] months---to save himself he has come up with all kinds of fantastic stor[illegible].

Q. How much do you say?
A. I say no amount. The thing is what we did is we ripped off drug dealers mainly. And when drugs had to be bought to show good faith he got drugs somehow or someway, but it was no big amount, never more than a pound, usually an eighth or a quarter of a kilo to show good faith so that the second time they brought a large amount of money and we could rip them off. That's what happened. Mainly that usually the procedure we went through.

Q. I guess a lot of folks are out there waiting for you?
A. There is a lot of people out there, I guess.

Q. How badly involved do you consider yourself to have been?
A. To be perfectly honest, I met this one individual, Alvin Rossi, in December of 72. I had just bought a home. To make a long story short, I was three months behind in my mortgage. I had sold my wife's car. I had my youngest son was a baby a couple of months old, and my car had been repossessed. And it was like, I don't know, an omen or something. I was a friend of mine who had been in the drug business. I grew up in a bad neighborhood in the Southern section of the Bronx. And I see this friend of mine. He has been ripped off by Rossi. And he asked me to go with him to recover some of his money, or recovery, you know, or to get restitution and in drugs or whatever. And he promised me $50 and I went with him.

Q. You must have how easy it is for a guy like me to point out to you, some guys have themselves in apparently bad financial conditions, you know, so they have got a short going.
A. No, let me put it to you this way. I have always worked. And I am sure my record shows that. I have always worked and worked hard. I have driven a truck. I was a truck helper. In March 73 from [illegible] when I was discharged from the service. In 1969 I was member of the Teamsters local. I worked from 69 until 63 in the trucking business---to 72, I'm sorry. In 73 I was getting my boxes. A big customer was Gimbels Gimbels Department Store---I don't know if you are familiar with them in New York City---from a man I was working with to another man, a different trucking outfit. The different trucking outfit was going to approach me because I knew the whole operation. As my whole income status would have been changed and I was hit in December of 72. I bought the house just prior to that, the summer of 72. I was not ready to buy the house. But it was a good buy and my mother had loaned me some money. My father loaned me some money. It was that three or four months span that I was about to lose the house and everything else that all this is I have place. It's not the fact that I didn't buy the money, I mean I [illegible] buy the house with money I made illegally. It was borrowed money and begged money and all other kinds of money. That was in December I met him.

Q. What did you do with the money?
A. I paid off my debts, I tried to break away from this Alvin Rossi, but I wish and I hope you do and you can go into his files. He gets 100% disability for his mind. I didn't know that at the time. He is a maniac. When he first helped me and gave me this money I told him I was honest with him. After this first deal I met him with this friend of mine I told you about and I became friendly with him. He invited me to Puerto Rico with about four or five other people. I went to Puerto Rico with him and sitting at a pool and told him I was going to loose my house, and this and that, and I needed money. And he lent me 15 hundred dollars right on the spot. After this was things came up or whatever he got jarred up on his past problems, he called me 2 o'clock 3 o'clock, 4 o'clock in the morning that he was being surrounded at his mother's house by different people and all this and that, and it would bring it up to me that if it wasn't for him I would have lost my house and I would not have this or that. The more I tried to break away from him the harder it was. Finally I did break away from him in November, 73. It was eight or nine months of my life that was hectic, that I did a lot of wrong things. And I put a gun in my hands a lot of times. But I want to come back to this one thing, I realize that the material things that I treasure, that I wanted for myself and for my family, aren't half as important as being with my daughter and my son as they are growing up right now, and with my wife who is alone.

C. Okay. We will decide it. We will let you know, thanks for coming in.
A. All right.

DECISION
MOT FIVE YEARS FROM DATE OF RECEPTION 2/80 Bd. Concur
Reasons:
The case history makes it reasonable to conclude that this man's involvement in narcotic traffic is deep-rooted and high level. Separation from drugs unprobable for five years.

ATTICA --- Jan. 15, 1976

CALVARESI, GILBRIDE, JONES JMC0/rw

FORM 3068-A

STATE OF NEW YORK—DEPARTMENT OF CORRECTIONAL SERVICES

MINIMUM SENTENCE NOTICE

Name C. Uzzo, Ernest Date 1-15-76

Institution Attica Correctional Facility NS Number [illegible]

The Board of Parole at the _____ meeting set your minimum sentence at 5 yrs. and 0 mos. You will appear for release consideration at the February 1980 Board meeting. In accordance with Section 805, Subdivision 2, of the Correction Law, this determination will be reviewed by the entire Board of Parole; and if any change is to occur, you will be notified.

CALDWELL
GILBRIDE
JONES

cc- Executive Secretary

Senior Parole Officer

Decision Affirmed
2/23/76

B

CORALLUZZO, Ernest #75-A-348 January 15, 1976

Reasons for MPI:

The case history makes it reasonable to conclude that this man's involvement in narcotic traffic is deep rooted and high level. Permanent separation from drugs seems improbable sooner than five years.

/bc

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ERNEST COFALLUZZO

Plaintiff

-vs- Civ-76-81

NEW YORK STATE PAROLE BOARD and MEMBERS OF THE NEW YORK STATE PAROLE BOARD, Individually and in their official capacity

Defendants

APPEARANCES: PHILIP B. ABRAMOWITZ, ESQ.
Buffalo, New York, for Plaintiff.

LOUIS J. LEFKOWITZ, ESQ., Attorney General of the State of New York
(LAUREN R. WIXSON, ESQ., of Counsel)
Buffalo, New York, for the Defendants.

On February 1, 1975, plaintiff was committed to the custody of the New York State Department of Corrections for an indeterminate term of up to fifteen years under N. Y. Penal Law § 70.00, for a violation of the New York Penal Law. An inmate subject to such an indeterminate sentence must meet with the New York State Parole Board within nine to twelve months from the date his sentence commenced and, at that time, the Board ". . . shall make a determination as to the minimum period of imprisonment to

be served prior to parole consideration." N. Y. Correction Law § 212(2).

The plaintiff met with the Board on January 15, 1976 and shortly thereafter was informed by form notice dated January 15, 1976 that his minimum period of incarceration [hereinafter MPI] had been set at five years and that he would appear before the Parole Board in February 1980 for release consideration. No reasons were given to him for setting his MPI on the form.[1]

The plaintiff argues that the Board's determination was deficient in that (1) no notice was given on which basis or evidence the Board would rely to deny parole; (2) plaintiff was not given an opportunity to view or examine the evidence relied upon by the Board or to cross-examine those who gave that evidence or to offer rebuttal evidence; (3) that plaintiff was secretly classified a member of organized crime and not allowed to confront that fact or evidence for its basis;[2] (4) that the Board's decision was not made on the basis of sufficient standards to provide for a fair and equitable and thoughtful decision or to allow the reviewing court a proper basis

for review; and finally (5) that the Board acted arbitrarily, capriciously and unlawfully in denying plaintiff's parole or reconsideration for five years.

The plaintiff seeks a declaratory judgment under 42 U.S.C. § 1983 to the effect that the Parole Board's consideration for release was conducted in violation of the plaintiff's rights under the fifth and fourteenth amendments, and an order directing the defendants to reconsider him for release in a proper manner.

The defendants argue that since the MPI hearing is only to set a tentative date for parole consideration, the petitioner does not have sufficient interest at stake to trigger due process rights. Parolees facing parole revocation are entitled to due process safeguards. Morrissey v. Brewer, 408 U.S. 471 (1972). Prospective parolees also have due process rights. United States ex rel. Johnson v. Chairman, 500 F.2d 925 (2d Cir.), vacated and remanded with order to dismiss as moot, 419 U.S. 1015 (1974). The defendants argue that since release cannot result directly from the MPI hearing, no due process safeguards should be required. However, the fact that immediate

release cannot result is only one aspect in considering the case. In areas such as these, this rule is recognized:

> The extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be "condemned to suffer grievous loss," Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 168, 71 S.Ct. 624, 647, 95 L.Ed. 817 (1951) (Frankfurter, J., concurring), and depends upon whether the recipient's interest in avoiding that loss outweighs the governmental interest in summary adjudication. Goldberg v. Kelly, 397 U.S. 254 at 262, 90 S.Ct. 1011 at 1017, 25 L.Ed.2d 287 (1970).
>
> Quoted in United States ex rel. Johnson v. Chairman, supra, at 928-29.

When faced with the argument that the MPI hearing was part of the judicial sentencing procedure for the purposes of representation by counsel, the Second Circuit commented:

> The purpose of the Board interview [at the MPI hearing] is to ascertain an inmate's background, to determine the inmate's needs in terms of correctional treatment, to explain to him what is expected of him before considering his release on parole, and to set a tentative date for considering his release on parole. In effect, then, the Board proceeding in question here is very much

> like an interview to schedule, tentatively and subject to change, a hearing for parole release. As such, in our view, it is an integral part of the parole release process, and hence our decision denying the right to counsel in parole release hearings controls the instant case.
> Walker v. Oswald, 449 F.2d 481, 484 (2d Cir. 1971).

The Board can release an inmate sentenced to an indeterminate term with no minimum after one year's incarceration. Thus, by statute, the MPI hearing (held after nine to twelve months incarceration) may result in scheduling a parole release hearing and a grant of parole within a matter of days after the MPI hearing. One of the alternatives available to the Board at a regular parole release hearing, when to review an inmate for parole consideration, is the major purpose of the MPI hearing. This is a critical decision to the inmate; e.g., in 1972 75% of the inmates appearing before the New York Parole Board were released. United States ex rel. Johnson v. Chairman, supra, at 928. The burden upon the state in providing notice of reasons for setting the date for the next hearing is minimal. Other due process requirements such as reviewing files and cross-examining sources of

information become more onerous.

This court agrees with the plaintiff that the MPI hearing is similar enough to the parole release hearing to require that reason be given for setting of the date this inmate will again meet with the Board. However, the court declines to rule that other due process requirements are necessary for such hearings. See Haymes v. Regan, 525 F.2d 540 (2d Cir. 1975).[2a/]

As we noted above, the Board did provide notice of reasons for setting of a five-year term of minimum imprisonment, but only after it had provided notice of the five-year "set off" without reasons, and only after this suit had been filed. Under these circumstances, the court will not consider whether such late notice of reasons was a proper basis for denying the plaintiff relief. An inmate should not be required to sue the Board in this court before reasons are provided. To even consider this late notice would encourage such a belief and practice by the defendants. A major rationale for the reasons' requirement is defeated by the failure to communicate those reasons to the inmate promptly. The court will not rule on the question of whether the reasons for the five-year "set off"

contained in the second notice meet the requirement of United States ex rel. Johnson v. Chairman, supra.

In addition, the court agrees with the plaintiff's argument that a requirement that reasons be given may alter the type of hearing the Board holds. See United States ex rel. Johnson v. Chairman, supra, at 931: "A reasons requirement 'promotes thought by the decider,' and compels him 'to cover the relevant points' and 'eschew irrelevancies.'"

The court directs the Parole Board to hold another MPI hearing. At this rehearing, the Board must base its decision on all relevant factors and furnish the inmate with both the grounds for the decision (e.g., that in its view the prisoner would, if released before a certain date, probably engage in criminal activity), and the essential facts upon which the Board's inferences are based (e.g., the prisoner's long record, prior experience on parole, lack of a parole plan, lack of employment skills or of prospective employment and housing, and his drug addiction). United States ex rel. Johnson v. Chairman, supra, at 934.[3/] This hearing is to take place within

sixty days from this order. The plaintiff's other requests for relief are denied.

The defendants had moved for dismissal because the plaintiff had not served the Chairman or any of the members of the Parole Board. The summons and complaint have since been properly served upon the attorney for the Board in Albany. The motion to dismiss because of improper service and because of failure to state a claim upon which relief can be granted is denied.

So ordered.

John T. Curtin

JOHN T. CURTIN
United States District Judge

DATED: August 6, 1976

FOOTNOTES

1/ On March 3, 1976, twelve days after the commencement of this action, another "Minimum Sentence Notice" was tendered to the plaintiff. This second form notice contains no blanks in which the Board can indicate its reasons for the setting of MPI, but the March 3, 1976 notice did indicate the reasons for the decision on the reverse side.

The defendants contend that the reasons contained on the second form were also orally given at the end of the MPI hearing. (Answer, ¶4). The transcript of that hearing, however, does conclude with reasons for the five-year "set off" but it does not appear that the plaintiff was in the room at that time.

2/ By an order dated September 12, 1975, a state judge directed that allegations indicating the plaintiff had connections with organized crime be stricken from the plaintiff's probation report. Peo. v. Coralluzzo, Ind. # 3247/1973 (Bronx County Supreme Court, September 12, 1975).

2a/ The court notes, however, that the recent Second Circuit opinion in United States ex rel. Carson v. Taylor, slip opinion, Docket No. 76-2006, July 22, 1976, requires that a parolee be given access to the actual documents used against him at a parole revocation hearing, absent a showing of good cause for keeping the information secret. The court's decision in this case, holding that the MPI hearing is similar to a regular parole hearing, requires the same disclosure, and the defendants are directed to make the actual evidence against the plaintiff available for his inspection.

3/ It appears that the Board is also required to do this by court interpretation of the statute. See Festus v. Regan, 376 N.Y.S.2d 56 (4th App.Div. 1975).

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ERNEST CORALLUZZO, Plaintiff

vs.

NOTICE OF MOTION

NEW YORK STATE PAROLE BOARD and MEMBERS OF THE NEW YORK STATE PAROLE BOARD, Individually and in their official capacity, Defendants.

CIV-76-81

PLEASE TAKE NOTICE that the undersigned will bring the above motion on for hearing before this Court at Part I, United States Court House, 68 Court Street, in the City of Buffalo, New York, on the 23rd day of August, 1976 at 10:00 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

Dated: Buffalo, New York
August 10, 1976

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendants

By:

LAUREN R. WIXSON
Assistant Attorney General,
of Counsel
65 Court Street
Buffalo, New York 14202
Telephone: (716) 842-5833

TO:
PHILIP B. ABRAMOWITZ, ESQ.
Attorney for Plaintiff
556 Franklin Street
Buffalo, New York 14202

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ERNEST CORALLUZZO,	Plaintiff	MOTION TO ALTER OR AMEND A JUDGMENT AND FOR RELIEF FROM JUDGMENT OR ORDER AND FOR A STAY PENDING DECISION OF SUCH MOTION
vs.		
NEW YORK STATE PAROLE BOARD and MEMBERS OF THE NEW YORK STATE PAROLE BAORD, Individually and in their official capacity,	Defendants.	CIV-76-81

The defendant, New York State Board of Parole, by its attorney, LOUIS J. LEFKOWITZ, Attorney General, Lauren R. Wixson, Assistant Attorney General, of counsel, moves the Court as follows:

1. To alter or amend the Decision and Order entered August 6, 1976 pursuant to 28 U.S.C. Rule 59(e), on the grounds that the provision contained in footnote 2a is ambiguous and improper and without foundation in law in that evidentiary requirements relating to adversary parole revocation hearings should not be applied to non-adversary parole release or Minimum Period of Imprisonment proceedings (see Johnson v. Chairman, 500 F. 2d 925 at p. 927).

2. To be relieved from the Order entered August 6, 1976 pursuant to 28 U.S.C. Rule 60(b) on the grounds that defendant could not respond to and was not aware of, the recent case of United States ex rel. Carson v. Taylor, dec. July 22, 1976 cited as authority by this Court for its direction in footnote 2a, due to the fact the Carson case was decided while the instant case was awaiting decision by this Court.

3. To be granted a Stay pursuant to 28 U.S.C. Rule 62(b) pending disposition of this motion.

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendants

By: Lauren R. Wixson
LAUREN R. WIXSON
Assistant Attorney General
65 Court Street
Buffalo, New York 14202

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ERNEST CORALLUZZO,

Plaintiff

-vs-

AFFIDAVIT

NEW YORK STATE PAROLE BOARD and MEMBERS OF THE NEW YORK STATE PAROLE BOARD, Individually and in their official capacity,

CIV-76-81

Defendants

PHILIP B. ABRAMOWITZ, being duly sworn, deposes and says:

1. That I represent the plaintiff, Ernest Coralluzzo, in this matter and I submit this affidavit in opposition to the Attorney General's motion to this court to reconsider the decision which it rendered in this case on August 6, 1976.

2. The Attorney General contands that the recent Second Circuit case of United States ex rel. Carson v. Taylor should not control the above referenced case because the Carson case, supra., dealt with a parole revocation hearing and the court in the Coralluzzo case has to make determination with respect to a hearing to determine whether or not parole should be granted.

3. In Carson, however, the court was specific in noting that a parole revocation hearing

> is carried out in two stages - (1) the determination of whether there has been a violation and, if so, (2) the decision as to whether parole should be revoked - the second, or dispositional, step, like the first, 'depends on facts,' requiring an accurate assessment of the parolee's past conduct and of the likelihood 'of restoring him to normal and useful life within the law.' (Citations omitted) In both steps the need to filter out distorted summaries of relevant facts is important. Accordingly, we conclude that the requirement of 'disclosure to the parolee of evidence against him does not turn on the stage of the proceeding in which the information is introduced. (5087-588 Slip Opinion)

4. In this particular case where the Parole Board must make a determination which "depends on facts requiring an accurate assessment of the parolee's past conduct and of the likelihood of restoring him to normal and useful life within the law" and where

specific reference to Mr. Coralluzzo the Parole Board said:

> "The case history makes it reasonable to conclude that this man's involvement in narcotic traffic is deep-rooted and high level. Separation from drugs seems improbable for five years."

Mr. Coralluzzo and his attorney should be permitted to see that "case history" on which the Board deduced that Mr. Coralluzzo's "involvement in narcotic traffic is deep-rooted and high level" and that "(s)eparation from drugs seems improbable for five years."

5. All of the Attorney General's arguments are more properly addressed to an Appellate Court, including that of the stay.

6. This Court has granted ample time for the defendants to hold a new M.P.I. hearing, and if the Attorney General appeals this decision he can request that relief in the Second Circuit.

WHEREFORE, it is respectfully requested that:

(1) this Court deny the Motion of the Attorney General for reconsideration and a stay, and

(2) require that the New York State Board of Parole turn over to Mr. Coralluzzo and his attorney the "case history" which it used to make its determination in the above-referenced case.

Philip B. Abramowitz, Esq.
Attorney for Plaintiff

Sworn to before me this
23rd day of August, 1976.

_____

jmg/c

SUPREME COUNT : BRONX COUNTY
TRIAL TERM : PART XII

----------X

THE PEOPLE OF THE STATE OF NEW YORK

- against -

ERNEST CORALLUZZO,

Indictment No.
3247/1973

Defendant.

----------X

KLEIN, J.:

This is a motion by defendant for an order striking certain allegations from the defendant's probation report and from his prison record.

On page four of the probation report there is stated: "The Police Department have information indicating that the defendant has established connections with either the Genovese or Gambino Family of organized crime." Defendant claims the statement is unsubstantiated and would prejudice his future parole status. Defendant contends that his designation as being a member of "organized crime" will result in his having to serve additional time in state prison.

The affidavit in opposition from the District Attorney's office does not respond to the material allegations of defendant's motion.

Accordingly, the motion is granted striking the aforesaid statement from the probation report, effective as of the date of the sentence on February 28, 1975. A copy of this order shall be served upon the District Attorney's office and the Probation Department.

Dated: September 17, 1975

A.J.K.

J. S. C.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ERNEST CORALLUZZO

Plaintiff

-vs- Civ-76-81

NEW YORK STATE PAROLE BOARD and MEMBERS OF THE NEW YORK STATE PAROLE BOARD, Individually and in their official capacity

Defendants

APPEARANCES: PHILIP B. ABRAMOWITZ, ESQ.
Buffalo, New York, for Plaintiff.

LOUIS J. LEFKOWITZ, ESQ., Attorney General of the State of New York
(LAUREN R. WILSON, ESQ., of Counsel)
Buffalo, New York, for the Defendants.

On August 6, 1976, this court directed the New York State Parole Board to hold another MPI (minimum period of incarceration) hearing for the plaintiff, Ernest Coralluzzo. In Footnote 2a of the August 6, 1976 opinion, the court noted that, because of the similarity of the MPI hearing with the parole release and parole revocation hearings, the defendants were to make the actual evidence against the plaintiff available for his inspection in accordance with United States ex rel. Carson v. Taylor, slip

opinion, Docket No. 76-2006, at 5083-5088 (2d Cir., July 22, 1976).

Subsequently, the defendants moved to alter or amend the August 6 decision and order. Defendants urge that the court's directive in footnote 2a, that the actual evidence against the plaintiff be disclosed to him, should not be applied to parole release and MPI proceedings.

The court now affirms its decision of August 6, 1976. In addition to the other requirements of that order, the defendants are directed to disclose to the plaintiff all of the evidence, in unabridged form, which may be considered against him, absent a showing of good cause for keeping the information secret.

The courts are split with respect to whether or not due process applies to parole release proceedings. Those holding that due process does apply include: United States ex rel. Johnson v. Chairman, 500 F.2d 925 (2d Cir. 1974); Cardaropoli v. Norton, 523 F.2d 990 (2d Cir. 1975); Haymes v. Regan, 525 F.2d 540 (2d Cir. 1975); Bradford v. Weinstein, 519 F.2d 728 (4th Cir. 1974), vacated as moot,

423 U.S. 147 (1975); United States ex rel. Richerson v. Wolff, 525 F.2d 797 (7th Cir. 1975); Childs v. United States Board of Parole, 511 F.2d 1270 (D.C. Cir. 1974).

The contrary view is expressed in Brown v. Lundgren, 528 F.2d 1050 (5th Cir. 1976), and Scott v. Kentucky Board of Parole (6th Cir., unreported), cert. granted, 44 U.S.L.W. 3358 (Dec. 15, 1975).

The court's decision of August 6, 1976 makes it clear that an inmate facing an MPI determination does have sufficient interest at stake so as to require that minimal due process safeguards apply to the MPI proceeding. The question now before the court is whether mandatory inspection of the file by the plaintiff would so appreciably enhance the protection accorded the inmate or add to the fairness of the MPI proceeding as to be required by the due process clause of the fourteenth amendment. See Haynes v. Regan, supra, at 544.

The courts are also divided with respect to the issue of whether a parole board is constitutionally required to allow an inmate to inspect his prison and parole file prior to a parole release proceeding.

At least three federal courts have held that inspection is constitutionally mandated: Franklin v. Shields, 399 F.Supp. 309, 316-17 (W.D.Va. 1975), accord, Williams v. Virginia Probation & Parole Board, 401 F.Supp. 1371 (W.D.Va. 1975); Cooley v. Sigler, 381 F.Supp. 441, 443 (D.Minn. 1974); Childs v. United States Board of Parole, 371 F.Supp. 1246 (D.D.C. 1973), aff'd in part, 511 F.2d 1270 (D.C.Cir. 1974).

Three other courts have held that, while inspection may be a beneficial addition to the hearing procedure, it is not mandated by the fourteenth amendment: LaBonte v. Gates, 406 F.Supp. 1227, 1232 (D.Conn. 1976); Fisher v. United States, 382 F.Supp. 241 (D.Conn. 1974); Wiley v. United States Board of Parole, 380 F.Supp. 1194 (M.D.Pa. 1974); Barradale v. United States Board of Paroles & Pardons, 362 F.Supp. 338 (M.D.Pa. 1973).

In Fisher v. United States, supra, the court found that disclosure to the inmate of the contents of his parole file is not required by the due process clause since such disclosure is not required of courts at sentencing. 382 F.Supp. at 243.

The Second Circuit, however, has recognized that the MPI hearing is an integral part of the parole release process rather than a part of the judicial sentencing procedure. Walker v. Oswald, 449 F.2d 481, 484 (2d Cir. 1971). See also, People ex rel. Johnson v. Montanye, 42 App.Div.2d 1041, 348 N.Y.S.2d 617 (4th Dept. 1973).

The District of Columbia Circuit has also distinguished parole consideration from sentencing:

> Parole consideration comes at a different stage of the over-all system, and is by a Board possessing broad but legislatively undefined discretion except to grant or deny parole. For the Board to exercise its discretion fairly and knowledgeably within the purposes of the system, rational means--rational considerations--must attend its functioning.
> Childs v. United States Board of Parole, 511 F.2d 1270, 1284 (D.C.Cir. 1974).

In determining the due process standards applicable here, the inmate's interest in insuring that an MPI decision be appropriate and fair must be balanced against the governmental interest in the orderly administration of the prison system. As the Second Circuit has recognized:

> The required degree of procedural safeguards varies directly with the importance of the private interest affected and the need for and usefulness of the particular safeguard in the given circumstances and inversely with the burden and any other adverse consequences of affording it. Friendly, "Some Kind of Hearing", 123 U.Pa.L.Rev. 1267, 1278 (1975); Frost v. Weinberger, 515 F.2d 57, 66 (2d Cir. 1975).
> Cardaropoli v. Norton, supra, at 996.

The inmate's private interest is great since the parole board's MPI decision determines the date at which the inmate will first become eligible for release on parole. 1/

The particular safeguard which the court now mandates — inspection by the inmate of his file — is especially appropriate in cases such as this where innuendos or allegations of the inmate's involvement with organized crime are present. 2/

Considerable documentation exists that inmates' prison files frequently contain erroneous information and that, in particular, serious errors are often made by the Government in determining that an inmate has links with organized crime. Cardaropoli, supra, at 997; Masiello v. Norton, 364 F.Supp. 1133 (D.Conn. 1973); Franklin v.

Shields, supra; LaBonte v. Gates, supra.

As recognized in the court's August 6 decision, the burden to the Government of disclosing such information would be minimal. Any possible "adverse consequences" could be avoided by the Government's showing good cause for keeping the information secret.

The requirement that actual evidence be disclosed to an inmate at the MPI proceeding is a logical and natural extension of the rationale supporting parole cases decided in this circuit since Morrissey v. Brewer, 408 U.S. 471 (1972). Morrissey held that disclosure to the parolee of the evidence against him was among the minimum due process requirements applicable at a parole revocation hearing. Morrissey, supra, at 489. United States ex rel. Johnson v. Chairman, supra, and Haynes v. Regan, supra, recognized that prospective parolees also have certain due process rights.

The Second Circuit's recent decision in United States ex rel. Carson v. Taylor, supra, extends the application of Morrissey to require that the parolee have access to the actual documents used against him at a parole revocation hearing. Carson, supra, at 5084. The court reasoned

that this was the only way to avoid "exposing a parolee to a substantial risk of recommitment upon the basis of erroneous impressions or conclusions grounded on innuendo or exaggeration, as distinguished from 'verified facts,' . . . ." Carson, supra, at 5084. The court concluded that because of the risks of distortion or subtle changes of meaning, a "summary of documents containing incriminating information that may be disputed by the parolee does not constitute an adequate substitute for the document itself . . . ." Carson, supra, at 5085.

In Shepard v. United States Board of Parole, slip opinion, Docket No. 76-2021, Sept. 7, 1976, the Second Circuit decided that a parole violation detainer should not have been allowed to stand "in the absence of basic elements of rudimentary due process":

> We think it necessary that at some point before the Commission decides not to withdraw the parolee's detainer, it disclose to him in unabridged form all the evidence which may be considered against him, except to the extent that the Commission meets the heavy burden of establishing good cause for its nondisclosure. Cf. United States ex rel. Carson v. Taylor, _____F.2d_____, _____, slip op. 5075, 5084-85 (2d Cir., July 22, 1976). Moreover, the Commission must effect this

> disclosure soon enough to allow the parolee a meaningful opportunity to contest, mitigate or explain the evidence revealed. "The essence of due process is the requirement that 'a person in jeopardy of serious loss [be given] notice of the case against him and opportunity to meet it.'" Shepard, supra, at 5425.

In a somewhat different context, Cardaropoli, supra, required that an inmate must receive appropriate notice when Special Offender classification is contemplated by prison officials. The notice must specify the reasons for the proposed designation and provide a brief description of the evidence to be relied on: "In addition, the inmate is to be fully informed [at the time of his personal appearance before a disinterested decision-maker] of the evidence against him . . .." Cardaropoli, supra, at 996 [emphasis added].

Only in Billiteri v. United States Board of Parole, slip opinion, Docket No. 75-6120 (August 30, 1976), has a Second Circuit panel reached a contrary conclusion. Citing Haynes v. Regan, supra, as support, the court found that a prospective parolee "has no such constitutional right to the information in the Parole Board's file,

including but not limited to the presentence report and the examiner panel's report." Billiteri, supra, at 5296. Cf., Parole and Reorganization Act, P.L. 94-233, U.S.C.C.A.N. (1976) at 567 [18 U.S.C. §4208(b) & (c)]. This court reads Haymes to direct only that disclosure of the Board's release criteria is not required by due process, so long as the Board provides the inmate with both the grounds for the decision to deny parole and "the essential facts from which the Board's inferences have been drawn." Haymes, supra, at 544. Haymes thus speaks to the reasons requirement rather than to the notice and disclosure-of-adverse-evidence requirements of Morrissey, and presents no bar to the decision the court reaches in this case.

As the Supreme Court reiterated in Wolff v. McDonnell, 418 U.S. 539, 558 (1974), "the touchstone of due process is protection of the individual against arbitrary action of government." Disclosure to the inmate of the actual contents of his parole file puts him on full notice of the evidence against him and allows him a meaningful opportunity to meet this evidence. Incorporation of such

a disclosure requirement into the MPI proceedings is a rational means designed to assure that an inmate is protected "from arbitrary and capricious decisions or actions grounded upon impermissible considerations." Haymes v. Regan, supra, at 544; United States ex rel. Johnson v. Chairman, supra, at 929; Childs v. United States Board of Parole, supra, at 1284.[3/]

Defendants are directed to serve on the plaintiff and to file with the court within fifteen (15) days of this order an affidavit showing reasonable cause why any of the items in plaintiff's parole file should not be disclosed to him.

The time for holding the MPI hearing, as originally set by this court's order of August 6, 1976, is hereby extended. This hearing is to take place within sixty (60) days of the date of this order.

So ordered.

John T. Curtin

JOHN T. CURTIN
United States District Judge

DATED: October 6, 1976

FOOTNOTES

1/ In another context, the Second Circuit has noted the significance of one's being deprived even of eligibility for certain benefits:

> The serious adverse consequences which flow from the Special Offender designation [often related to alleged contacts with organized crime] are found, most significantly, in the total or partial loss of eligibility for substantial benefits normally afforded every inmate. Preclusion from access to those benefits entails loss as grievous as that occasioned by their revocation, for the inmate's stake remains the same in each instance.
> Cardaropoli v. Norton, supra, at 995, n.11 [emphasis added].

2/ See the order of Justice Klein, Supreme Court, Bronx County, dated September 12, 1975 (Indictment No. 3247/1973), directing that the following statement be stricken from the probation report: "The Police Department have [sic] information indicating that the defendant has established connections with either the Genovese or Gambino Family of organized crime." Justice Klein granted Coralluzzo's motion to strike the above because the District Attorney's affidavit did not respond to the material allegations of the motion.

3/ The procedures followed in California for fixing an inmate's term of imprisonment and for granting parole closely parallel those followed in New York

State. See California Penal Code, §§1168, 3020 and 5077. The California Supreme Court has recognized the need for disclosure to the inmate of information available to parole officials:

> [6] From the inmate's point of view a policy of nondisclosure increases the potential for unfairness. Unless the prisoner learns what information is in the Authority's possession he cannot intelligently decide what subjects to discuss at his predisposition interview. (See § 5077.) Especially with respect to statements containing information which may be inaccurate and was not presented at trial--either because the information was not sufficiently trustworthy, was not legally admissible or had not been obtained at that time--the inmate may have no knowledge of even the fact of the lodging of false or inaccurate charges. In such a situation a refusal to apprise him of the source and nature of the information would effectively deny all reasonable opportunity to respond. "'[T]he stakes are simply too high . . . and the possibility for honest error or irritable misjudgment too great, to allow'" submission of such potentially damaging remarks without at least an opportunity to challenge them.
> In Re Prewitt, 503 P.2d 1326, 1331 (Cal. Sup.Ct. 1972).

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ERNEST CORALLUZZO,	Plaintiff	NOTICE OF MOTION FOR STAY PENDING APPEAL
v.		
NEW YORK STATE PAROLE BOARD and MEMBERS OF THE NEW YORK STATE PAROLE BOARD, Individually and in their official capacity,	Defendants.	CIV-76-81

PLEASE TAKE NOTICE that the undersigned will bring the above motion on for hearing before this Court at Part I, United States Court House, 68 Court Street, in the City of Buffalo, New York, on Tuesday, October 26, 1976 at 10:00 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

Dated: Buffalo, New York
October 15, 1976

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendants

By:

LAUREN R. WIXSON
Assistant Attorney General
65 Court Street
Buffalo, New York 14202

TO:
PHILIP B. ABRAMOWITZ, ESQ.
Attorney for Plaintiff
556 Franklin Street
Buffalo, New York 14202

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ERNEST CORALLUZZO,	Plaintiff	MOTION FOR STAY PENDING APPEAL
v.		
NEW YORK STATE PAROLE BOARD and MEMBERS OF THE NEW YORK STATE PAROLE BOARD, Individually and in their official capacity,	Defendants.	CIV-76-81

The defendant, New York State Board of Parole, by its attorney, LOUIS J. LEFKOWITZ, Attorney General of the State of New York, Lauren R. Wixson, Assistant Attorney General, of counsel, moves the Court for an Order staying the effect of the Order entered October 6, 1976 pending appeal of that Order to the United States Court of Appeals for the Second Circuit and until the determination thereof and respectfully shows to this Court as follows:

1. Defendant, by its attorney, filed a Notice of Appeal to the Second Circuit Court of Appeals in the office of the Clerk of the United States District Court, Western District of New York on October 14, 1976.

2. Said appeal is from a Decision and Order entered October 6, 1976 which ordered the defendant to hold a new MPI hearing for plaintiff within 60 days of the date of said Order and to disclose to plaintiff all the evidence, in unabridged form, which may be considered against him at such MPI proceeding, absent good cause for keeping the information secret.

3. Defendant's appeal, particularly from that portion of the Order requiring disclosure, presents novel questions of law of fundamental importance. Among these questions is the adversary or non-adversary nature of the MPI proceeding itself; the distinction between the parole revocation and parole release process; the extent of the application of the due process clause in parole release and MPI proceedings; the burden of disclosure on the Board of Parole and the Corrections Department; the effects on the rehabilitative process

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of the disclosure of such reports (see New York Correction Law §211, §214 subd. 4) dealing with the inmate's mental and psychological condition and other reports of various officials, correction counsellors and parole officers which state only a non-factual opinion of the inmate's past and his future chances of successful adjustment to society; and possible alternatives, short of disclosure, of resolving possible factual discrepancies in the inmate's record.

4. Defendant's appeal is meritorious and has a good chance of success especially as to that part of the Order mandating disclosure (see Billiteri v. United State Board of Parole, slip opinion, Docket No. 75-6120, August 30, 1976; Haymes v. Regan, 525 F. 2d 540; U.S. ex rel. Johnson v. Chairman, 500 F. 2d 925).

5. Unless, pending defendant's appeal to the Second Circuit, said Order is stayed; irreparable damage will result in that defendant will be required to hold a new MPI hearing and to disclose said documents to the plaintiff, thus rendering the appeal largely academic.

WHEREFORE, defendant prays that this Court grant a stay of its Order entered October 6, 1976, pending appeal to the Second Circuit Court of Appeals and for such other and further relief as to the Court may seem just and proper.

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendants
BY:

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Buffalo, New York 14202
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STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

Audrey Gordon , being duly sworn, deposes and says that she is employed in the office of the Attorney General of the State of New York, attorney for Defendants-Appellants herein. On the 30th day of November , 1976 , she served the annexed upon the following named person :

MR. PHILIP B. ABRAMOWITZ, ESQ.
556 Franklin Street
Buffalo, New York 14202

Attorney in the within entitled action by depositing a true and correct copy thereof, properly enclosed in a post-paid wrapper, in a post-office box regularly maintained by the Government of the United States at Two World Trade Center, New York, New York 10047, directed to said Attorney at the address within the State designated by him for that purpose.

Audrey Gordon

Sworn to before me this
30th day of November , 1976

Kenneth M Kay

Assistant Attorney General
of the State of New York